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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,908	01/04/2006	Gianluigi Roverio	BFL-701.01	6241
25181	7590	04/09/2009	EXAMINER	
FOLEY HOAG, LLP			DEES, NIKKI H	
PATENT GROUP, WORLD TRADE CENTER WEST			ART UNIT	PAPER NUMBER
155 SEAPORT BLVD			1794	
BOSTON, MA 02110				

  

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04/09/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/551,908	ROVERIO, GIANLUIGI	
	<b>Examiner</b>	<b>Art Unit</b>	
	Nikki H. Dees	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 04 January 2006, 25 March 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-12 and 17-20 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-12 and 17-20 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 10 October 2007.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_ .

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 1 is objected to because of the following informalities: in line 2, change "in" to "of". Appropriate correction is required.
2. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 10 claims an additional step for the process of claim 1. However, claim 1 uses the closed language "consisting in [sic]". Therefore, the process may not comprise any additional steps, as required by claim 10.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 18 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to

which it pertains, or with which it is most nearly connected, to make and/or use the invention.

5. The process as claimed in claim 10, upon which claims 18 and 20 are dependent, is not enabling for the production of the extensive list of food products claimed. The specification only teaches making candy and jelly. There is no disclosure of how any of the other foods such as biscuit, ice cream, snack, seasoned cheese are made. The many different foods claimed are known to make by different processing steps. The specification does not teach the processing steps for any of these foods beside candy and jelly.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-3, 6, 8, 11 and 18-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claim 1 claims floral material cultivated with techniques suitable for materials that are to be consumed by humans. One farmer's idea of what is a suitable technique for materials to be consumed by humans may not be the same as another's. Claims to cultivation techniques without any further definition are considered to be indefinite.

9. Claim 2 claims cultivation with organic farming techniques. Organic farming techniques are not well-defined and may vary widely depending on the organization

certifying the techniques. For this reason, a claim to organic farming techniques is considered to be indefinite.

10. Claim 3 similarly claims cultivation with techniques useful in the horticultural field. A technique considered useful by one horticulturalist may be disdained by another. For this reason, it is unclear what techniques Applicant is claiming that are to be considered "useful in the horticultural field."

11. Claim 6 claims material harvested in "late spring" or "early autumn." It is unclear how broad or narrow the window of time the limitations "late" and "early" are to encompass.

12. Claims 8, 11, and 19, claim "non-natural" aromas. It is unclear what Applicant considers to be a "non-natural" aroma.

13. Claims 18 and 20 claim a "seasoned cheese." It is unclear what applicant intended to encompass by these claims. A seasoned cheese may be a cheese with seasonings, or a cheese that has been aged (i.e. seasoned) or both.

14. Claim 19 is vague and indefinite. It is unclear what food additives applicant intends to encompass by claiming "excipients."

#### ***Claim Rejections - 35 USC § 102***

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 12 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Emarkaryan (3,060,033).

17. Claims 12 and 17-20 are product-by-process claims. Patentability does not depend on method of production, rather the product made. The different method of making does not make the product patentable over the prior art.

18. Emarkaryan teaches a sugary solution containing floral material. This sugary solution is further combined with other ingredients to produce confectionary products including jams, jellies, and Turkish delight (col. 3 lines 15-26). These products anticipate Applicant's claims 12 and 17-20.

### ***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Emarkaryan (3,060,033) in view of Francis (Francis, F. J. 1999. Wiley Encyclopedia of Food Science and Technology. 2nd Edition. Volumes 1-4. pp. 2305-2321. John Wiley & Sons).

21. For purposes of the prior art rejections, any method of cultivation will be considered to meet the limitations of claims 1-3 to particular methods of cultivation as these claims are considered to be indefinite for the reasons detailed above.

22. Emarkaryan teaches a method for preparing an edible sugary composition comprising harvesting fresh floral material and combining the material with sugar (col. 1 lines 30-35). The sugar and rose mixture may then be combined with water to form a sugary syrup comprising the floral material (Example IV).

23. Regarding claims 4-6, Emarkaryan teaches the flowers are to be harvested when the flowers are in full blossom. The old and wilted petals are not to be used (col. 1 lines 69-72). The flowers of Emarkaryan are harvested in late May and early June (late spring) (col. 2 lines 1-2). From these teachings, one of ordinary skill would have found it obvious to discard the petals that first unfolded as these would be the oldest petals on the flower.

24. Regarding claims 8 and 11, Emarkaryan states that his rose flavoring may be used in combination with food preservatives and other flavoring agents (col. 3 lines 24-25).

25. Emarkaryan is silent as to a method for pasteurizing a solution comprising a sugary syrup and floral matter.

26. Francis teaches pasteurization of liquids where the temperature is raised to the desired temperature, held for the necessary length of time, and then quickly cooled to the desired temperature (p. 2306 col. 1). Table 1 (p. 2306) shows typical processing

conditions for a variety of foodstuffs. Specific pasteurization conditions may vary widely within known ranges depending on the operator and the material to be pasteurized.

27. One of ordinary skill in the art at the time the invention was made wishing to provide microbial stability to the sugar solution would have found it obvious to pasteurize the solution, as pasteurization is a well-known technology in the art as is shown by the teachings of Francis. One of ordinary skill in the art at the time the invention was made would have been able, through no more than routine experimentation, to determine the appropriate heating and cooling temperatures and times as claimed for the pasteurization of a sugary syrup. Francis teaches that the pasteurization conditions may vary widely depending on the operator and the material to be pasteurized (p. 2306). As pasteurization is a well known and widely used process for imparting microbial stability to foodstuffs, one of ordinary skill would have expected the sugary syrup to maintain the favorable organoleptic properties provided by the addition of floral material while at the same time possess the desired microbiological stability.

28. Applicant's claim to combining the floral material with a sugar solution are considered to be obvious over the teachings of Emarkaryan where the rose petals are first combined with sugar, then combined with water to form a sugary solution. Applicant's order of performing the mixing steps results in the same sugary syrup composition comprising floral material as the teachings of Emarkaryan. As there are no unexpected results obtained, the change in order of the steps is considered to be obvious.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikki H. Dees whose telephone number is (571) 270-3435. The examiner can normally be reached on Monday-Friday 7:30-5:00 EST (second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nikki H. Dees/  
Examiner, Art Unit 1794  
/Lien T Tran/  
Primary Examiner, Art Unit 1794

Nikki H. Dees  
Examiner  
Art Unit 1794